

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 839 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

DILIPSINH KANUBHA

Appearance:

1. Criminal Appeal No. 839 of 1992
MR MA BUKHARI, APP, for the Appellant.
MR CR ABICHANDANI for MR RR VAKIL for the Respondent.
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/07/2001

ORAL JUDGEMENT

1. The present appeal is preferred by the State of Gujarat to challenge a judgment and order rendered by learned Chief Judicial Magistrate, Jamnagar, in Criminal Case No.4451 of 1988, on March 11, 1992, acquitting the present respondent of the charges levelled against him for offences punishable under Sections 419, 406 and 420 of Indian Penal Code.

2. The facts leading to the present appeal can be narrated thus:-

2.1 A First Information Report came to registered with City "A" Division Police of Jamnagar on April 21, 1988, by one Chhabilshanker Janmashanker Jani against the present respondent alleging that the present respondent had committed cheating and criminal breach of trust while working as a Junior Clerk in the Army Welfare Office of Jamnagar by misappropriating an amount of Rs.24,200/- for his personal use out of the money payable to the widows of Army, Navy and Air Force personnel. According to the said F.I.R., the respondent misappropriated an amount of Rs.8,000/- from the amount payable to Nanaba Harisinh, Rs.4,300/- from the amount payable to Ramba Dudaji, Rs.5,000/- from the amount payable to Hemkunvarba Kesarisinh and Rs.10,000/- from the amount payable to Bakunvarba Devsinh, by misusing his position as a Junior Clerk in the office, who was entrusted the work of helping the widows of Army, Navy and Air Force personnel for getting Family Pension benefits, as per the direction of the Apex Court. Offence came to be registered and investigated and, ultimately, charge sheet was filed. Learned Trial Magistrate framed charge against the accused vide Ex.4 for the offences punishable under Sections 406, 419 and 420 of Indian Penal Code. The accused pleaded not guilty to the charge and came to be tried.

2.2 Considering the evidence led by the prosecution, the learned Chief Judicial Magistrate came to a conclusion that the prosecution could not prove the charges against the accused beyond reasonable doubt and, therefore, acquitted the accused-respondent of the charges.

2.3 Aggrieved by the said judgment and order, the state has preferred this appeal.

3. Learned Additional Public Prosecutor Mr. Bukhari has taken this Court through the record and proceedings and the judgment and order under challenge. He contended that the Trial Court has committed an error in appreciating the evidence. He submitted that there is evidence on record to show that the accused had paid the amount to the witnesses at a later point of time and, therefore, a case of temporary misappropriation ought to have been accepted by the learned Trial Magistrate. He submitted that it is very clear that the respondent has adopted a modus operandi of misusing his position in the

office and relations with the bank. He submitted that the respondent has misappropriated the money payable to the needy and helpless widows of personnel of Armed Forces and the learned Trial Magistrate ought to have sternly dealt with him. He, therefore, urged that the appeal may be allowed.

4. Learned advocate Mr. C.R. Abichandani appears for the respondent representing Mr. R.R. Vakil. He has also taken this Court through the record and proceedings. He has pointed out that the evidence of the prosecution, even if taken at face value, does not establish the charges against the accused, as rightly held by the learned Chief Judicial Magistrate. He submitted that, as per the prosecution evidence itself, the amounts payable to the widows were paid by crossed and account payee cheques and such cheques came to be deposited in the in the bank in their respective accounts and the amount could be withdrawn only under the signature of the widows whose photographs are also with the bank. Mr. Abichandani submitted that it has come on record that the respondent obliged the beneficiaries by identifying them, as such, before the bank and, for that identification, he has placed his signature on the withdrawal slips. Therefore, the story of the prosecution that the respondent clandestinely misappropriated the amount and, subsequently, paid the same to the beneficiaries in piecemeal and thereby committed temporary misappropriation cannot be accepted. He submitted that, in any case, the view taken by the learned Chief Judicial Magistrate cannot be considered as an impossible one. No error of law or fact can be said to have been committed and, therefore, this Court may not show any indulgence in favour of the appellant in this acquittal appeal and the appeal may be dismissed.

5. Having closely scrutinized the evidence and having given a thoughtful consideration to the facts of the case, it is found that the appeal lacks merits and deserves dismissal for the reasons that would be stated hereinafter.

6. The whole chapter started on basis of some application given by the widows of Umedsinh Manubha and Ghanshyamsinh Jadeja to the District Army Welfare Officer Mr. Kamal Gupta that the money payable to them are not paid to them. A departmental inquiry was initiated, which was conducted by one Lavjibhai Vadia who, ultimately, gave a report (Ex.20).

7. The prosecution has, in order to prove the

charges against the accused-respondent, examined various witnesses. Witness Chhabilshanker Janmashanker Jani (Ex.6) is the person who had lodged the F.I.R. He says that he has no personal knowledge about the F.I.R. However, he admits that the amount of pension is paid by the Treasury Office by crossed cheques in favour of the beneficiary.

8. Witness-Nanaba Harisinh is examined at Ex.9. She says that an amount of Rs.8000/- was subsequently paid by the respondent-accused. She says that the accused had accompanied her to the bank for opening an account. She does not know to which bank she had gone. She says that Rs.16,000/- were receivable by her. The accused did not pay Rs.8,000/- out of the said amount. She, therefore, talked to Dhanba, Khengarji, etc. and, ultimately, the accused paid the remaining amount of Rs.8000/- in two instalments of Rs.4000/- each.

8.1 In the cross-examination, she states that no complaint is given by her in this regard. She has received the entire amount. To which bank she went for opening the account is not known to her. She states that the amount of pension is received by cheque from the Treasury office. She states that, after receiving the cheque from the Treasury, she has to present the cheque in the bank and, thereafter, the bank makes the payment after verifying the photographs. She states that she does not know the accounts. She states that the bank account is in her name and she has received the entire amount. The cheque was received in her name. She denies the suggestion that she is falsely implicating the accused.

9. Witness-Ramba Dudaji is examined at Ex.10. She says that she knows the accused. She had gone to Treasury office and, at that time, the accused also came there. He told her to give her signature and take the money. Her signatures were obtained and money was paid at her residence. She states that an amount of Rs.4300/- was paid less than the amount receivable. On inquiry, the respondent-accused informed her that this was the money receivable by him for the services rendered by him. During cross-examination, she admits that the amount of pension is received through crossed cheque which is required to be deposited in her account and the bank makes the payment only on seeing her photograph.

10. Witness-Umedsinh Anubha (Ex.11) says that Nanba is his aunt. He says that she had come to his house and told that accused misappropriated Rs.8000/-. He then informed Ghanshyam and Khengarji about the same and,

therefore, the accused paid the amount back in two instalments of Rs.4000/- each. He admits that cheque for the amount of pension was received by Nanba and it was deposited in Central Bank. He does not know as to what transactions were entered into by Nanba in respect of that account.

11. Ghanshyamsinh Madhavsinh in his deposition (Ex.12) says that an amount of Rs.16,000/- was payable to Nanba. Nanba told him that an amount of Rs.8000/- is received by her. She was, therefore, asked that the cheque was for an amount over Rs.16,000/- and, then Nanba replied that rest of the money is taken away by Parmarbhairi, i.e. the present respondent. He says that they, therefore, went to the office of the respondent and asked the respondent to make payment. He told that he did not have money then and, ultimately, he paid the amount in two instalments of Rs.4000/- each over a spell of 15 days. During cross-examination, he states that he does not know as to exactly when the incident took place. He was not there when the payment was made. He says that he did not lodge any complaint on May 14, 1987.

12. Witness-Lavjibhai Dahyabhai (Ex.14) states that he had conducted the inquiry and recorded statements of Vajuba Abhesinh, Ratanba Tapubhai, Maniba Lakhubhai and Hemkunvarba Kesarisinh.

12.1 During cross-examination, he admits that the allegations did not find support from the inquiry. He says that the amount of pension is paid by crossed cheque drawn in favour of the beneficiary and such cheque is deposited in the account of the beneficiary.

13. Witness Bhupatrai Dhirajlal Sanghvi (Ex.15) says that he was working with State Bank of Saurashtra, Lal Bungalow Branch. He says that on December 10, 1986, an amount of Rs.15,300/- was withdrawn from the account of Bakunvarba Devisinh Jadeja bearing Savings Bank Account No.13807. He says that there is signature of Dilipsinh Parmar on the hind portion of the withdrawal slip. He says that, as per the rules of the bank, signature of the person who takes money is obtained on the hind portion of the withdrawal slip. He says that one B.T. Vora was the Cashier at that time. During cross-examination, he admits that, on the hind portion of the slip, there are signatures of Bakunvarba Devisinh, which were made for verification and, thereafter, signature of Dilipsinh Parmar is obtained as an attesting witness. This version of the witness finds support from the evidence of Indravijaysinh Madarsinh Parmar (Ex.18), who happens to

be son-in-law of Bakunvarba. He categorically stated that Bakunvarba had received the cheque which was deposited in the State Bank of Saurashtra. At the that time, Dilipsing was present in the bank and, therefore, on the bank asking for introduction, signature of Dilipsinh was obtained on the withdrawal form for identification and the amount was paid to his mother-in-law in full.

14. Taking an overall view of the matter, what transpires is that the respondent was serving in the Welfare Office and his job was to help the widows of the Army personnel. It is alleged that he pocketed some amount from the amount payable to the widows by way of pension. From the evidence, it emerges that the amounts payable by the Welfare Office were paidl by crossed cheques to be deposited only in the accounts of the beneficiaries of the cheques. It has also come on record that cheques have duly been deposited in the respective accounts. Against this, there is absolutely no evidence to indicate that the amount was paid by the bank to the respondent instead of the beneficiaries and the said amount was misappropriated by him for his personal use. It transpires from the evidence on record that there is no evidence to indicate entrustment of any amounts nor is there any evidence to show entrustment of any cheques or encashment by respondent so as to fall in the definition of 'criminal breach of trust' as referred to in I.P.C. There is no evidence to indicate any cheating by the respondent either.

15. Learned Chief Judicial Magistrate has taken into consideration all these aspects. There is evidence to indicate that respondent had signed the hind portion of the withdrawal slip only as an attesting witness and not as the person receiving the amount. This is in respect of the amount receivable by Nanba. For rest of the beneficiaries, there is no evidence to indicate that the amounts were received by the accused-respondent and misappropriated to his use.

16. No error of law or fact is indicated by the learned Additional Public Prosecutor nor it is found by this Court despite a close scrutiny of the evidence on record. It cannot be said that the view taken by the Trial Court is perverse or impossible one. The appeal, therefore, must fail and is dismissed.

[A. L. DAVE, J]

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